

department (SHD) official, which is in excess of the SHD's approved estimate of just compensation.

(b) *Legal settlement.* Any settlement made by the responsible State legal representative. This includes stipulated settlements approved by the court in which the condemnation action has been filed.

(c) *Court award.* Any decision following a contested trial or hearing before a jury, commission, judge, or other legal entity having the authority to establish the amount of compensation for a taking under the laws of eminent domain.

§ 712.403 Applicability.

The provisions of this subpart are applicable in the acquisition of real property for a highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project.

§ 712.404 Administrative settlements.

Administrative settlements on Federal and federally-assisted highway projects are governed by the provisions of 49 CFR 24.102(i).

[50 FR 34092, Aug. 23, 1985, as amended at 54 FR 47076, Nov. 9, 1989]

§ 712.405 Legal settlements.

(a) The SHD shall identify the legal office or official responsible for making legal settlements. The coordination which will be followed between the legal office and the right-of-way office prior to making any settlement shall be described.

(b) The legal office or official may make a legal settlement when it is determined that such action is in the public interest. Legal settlements which are based upon new or revised appraisal data as the principal justification shall be coordinated with and approved by the responsible official of the acquiring agency having final authority over the right-of-way matters.

(c) The appropriate State file shall be documented whenever a legal settlement in excess of the amount established as just compensation is made. The rationale for the settlement shall be set forth in writing. Federal funds may participate in legal settlements

made and documented in accordance with the provisions of this paragraph.

§ 712.406 Court awards.

Federal funds may participate in excess of the amount established as just compensation if there is supporting documentation in the appropriate State file which includes:

(a) A trial report, signed by the trial attorney.

(b) A signed statement of the legal counsel in charge of representing the State in condemnation litigation stating his concurrence in the reasoning and disposition of the case.

§ 712.407 Noncompensable items.

Should the administrative settlement, legal settlement or the court award include an apparent payment for items considered ineligible for Federal participation, the amount paid for such items shall be determined by the SHD and excluded from the SHD's claim for Federal participation in the settlement or award.

§ 712.408 Special counsel.

(a) If part-time assistants or legal counsel are employed for Federal-aid right-of-way procurements, reimbursement may be claimed for the eligible cost of the services of such attorney, provided that such assistants or counsel are employed in accordance with SHD procedures that have been approved by the FHWA.

(b) Federal participation shall not be permitted in payment made to a city or county attorney for work performed in connection with the acquisition of rights-of-way where he is obligated to perform such work without additional compensation. In those cases where the normal duties of the attorney for which he is compensated do not include the acquisition of property for highway purposes, Federal funds may participate in payments to him for services performed upon a proper showing of the facts.

[39 FR 29593, Aug. 16, 1974; 39 FR 34277, Sept. 24, 1974, as amended at 59 FR 25327, May 16, 1994]